

TELEGRAPH PROSECUTION (IRELAND).

RETURN to an Order of the Honourable The House of Commons,
dated 22 July 1880;—
for

COPIES "of the INFORMATION in the Case of the QUEEN v. BURTON, a Telegraph Clerk, taken before the Police Magistrates, Dublin, on or about the 29th day of May last."

"Of the BAIL BONDS entered into by the Prisoner and his Bailsmen;"

"And, of the Official or Special Shorthand Writer's REPORT of the Trial at Green Street on Friday the 18th day of June 1880, when the aforesaid *Henry Burton* was Convicted of, and Sentenced to Two Months' Imprisonment for, disclosing TELEGRAMS in reference to the late ELECTION for the County of Meath."

General Post Office,)
21 July 1880. J

S. A. BLACKWOOD,
Secretary.

COPY of the INFORMATION in the Case of the QUEEN v. BURTON, a Telegraph Clerk, taken before the Police Magistrates, Dublin.

Police District of Dublin Metropolis, to Wit.

THE INFORMATION of EDWARD ST. JOHN BRENNAN, of No. 25, Crosthwaite Park, Kingstown, who, being duly sworn upon oath at the Metropolitan Police Courts, Isaac Quay, Southern Coast, in said district, before me, one of the justices in and for said district, deponeth and saith as follows:—

I was at the City Hall on Monday, the 17th instant, between the hours of two and three. There was a meeting of the Irish Parliamentary party. I was standing near the glass door listening to the debate, when I felt my left hand pressed by a gentleman, who left on doing so; I understood it to be a sign to follow him, but did not do so. About three minutes afterwards a young man entered the hall and beckoned to me; although I did not know him I went out, and on arriving outside, he said, "Mr. Fay is no friend of yours, he is putting up a man to oppose you in Meath; I know it because I am a telegraph clerk, and the telegrams pass through my hands; because I am a Parnellite I give you this information, but if it were known I would be ruined. He telegraphed to his brother, who is in a bank, or something in Meath. He is running a Mr. St. John Brennan against you." I said, "Umpf!" "Mr. St. John Brennan is a fellow from Kingstown, and Fay says he is a man of means." Then I asked him "Who is this Mr. St. John Brennan?" he replied, "He is a grocer's man; he stood for Westmeath against Mr. T. D. Sullivan, and is a vintagers' man." He then said to me, "I tell you this because I know you are Mr. Healy." Then I said to him, "What is your name?" and I took a good look at him. He replied, "Burton." He then said to me, "Well, I know you are Mr. Healy." I said, "Umpf!" I said, "I think you had best not be seen speaking to me." I can identify the man. I see the telegram now produced; that telegram was written by me, at the instance, and with the authority, of Mr. Charles Fay, the sender. I handed it in at the Four Courts Telegraph Office on Saturday, the 16th instant.

Informant bound in 20*L* to prosecute.

(signed) Edward St. John Brennan.

Sworn before me this 18th day of May 1880,

W. A. Esham.

PAPERS RELATING TO THE

Police District of Dublin Metropolis, to Wit.

THE INFORMATION of ROBERT OGILVIE ANDERSON, of No. 9, Grosvenor-road, Rathmines, in said district, who, being duly sworn upon oath at the Metropolitan Police Courts, Inns Quay, Southern Court, in said district, before me, one of the justices in said district, deposeth and saith as follows:—

I am the Controller of the General Post Office, Dublin. The telegraph department is under my control. I know Henry Benton; he is a telegraph clerk in the Dublin office; he was on duty in the instrument room on Saturday, the 15th instant.

I see the telegram, now produced, from Charles Fay to Thomas Fay; that telegram was sent from the Four Courts, through the Dublin Office, to Trim, on Saturday, the 15th instant. In the ordinary course of official business Henry Benton would have had access on Saturday last to the telegram now produced.

Informant bound in 20*l.* to prosecute.

(signed) R. O. Anderson.

Sworn before me this 19th day of May 1880,

W. A. Exham.

Police District of Dublin Metropolis, County of the City of Dublin.

POSTMASTER GENERAL v. HENRY BENTON.

THE DEPOSITION of EDWARD ST. JOHN BRENNAN, of No. 23, Crouchende Park, Kingstown, taken before me, the undersigned, one of the magistrates presiding at Inns Quay Police Court, in the County of the City of Dublin, in said district, in the presence and hearing of the said defendant, who stands charged that he, being employed as a clerk in the Telegraph Department of the General Post Office, Dublin, did divulge the contents of a telegram on the 17th May 1880, at the City Hall, in said district; the said defendant being duly sworn on oath, deposeth and saith:—

I refer to my information of the 19th day of May 1880, which I have heard read to me to day, in presence and hearing of defendant, whom I identify as the person referred to in my information, and I identify the telegram produced as the one I refer to in that information.

I had sent no other telegram on the 15th instant to the gentlemen referred to except the one produced, to which the conversation could have referred.

Cross-examined by Mr. Crown.] I am not the author of the telegram. My information is perfectly correct. Mr. Fay told me the words in use in the telegram; I had seen him a few minutes before I sent the telegram. I was a candidate for Wexford; I published an address; I was not a candidate for Meath.

I knew Mr. Healy's appearance well, but not personally. I did not persecute Mr. Healy; I would consider it an indignity; defendant presumed I was Mr. Healy; I did not question or repudiate; defendant had a conversation with me; I left him, I presume, under the impression that I was Mr. Healy; I considered it an offence most indecently to disclose my own telegram; there are other telegrams of mine; he said he disclosed other telegrams.

After the passage in my information, when defendant said I persecuted Meath with Mr. T. D. Sullivan, he said that he told Mr. Sullivan everything as he considered him a second father. I went to the telegraph people the next day, but I advised what I would do on the moment. I have spoken to Mr. Healy long before this transaction; I don't believe I persecuted him.

And the said deponent binds himself to attend at Commission to prosecute and give evidence, or otherwise to forfeit to the Crown the sum of 10*l.* sterling.

(signed) Edward St. John Brennan.

Taken before me this 21st day of May, in the year 1880, at the aforesaid police court in said district,

W. A. Exham,
One of the Justices for said District.

ROBERT OGILVIE ANDERSON, sworn:—

I REFER to my information of the 18th instant, read to me in presence and hearing of defendant, whom I identify as the person referred to in that information, the contents of which are true.

And the said deponent binds himself to attend at Commission to prosecute and give evidence, or otherwise to forfeit to the Crown the sum of 10*l.* sterling.

(signed) R. O. Anderson.

Taken before me this 20th day of May, in the year 1880, at the aforesaid police court in said district.

W. A. Exham,

* One of the Justices for said District.

PETER WILSON, sworn:—

I AM employed in the Telegraph Department of the General Post Office. The prisoner is also employed there. He was on duty on Saturday, the 18th instant. I saw him a little after four o'clock, about two minutes, and I left then. It was in the news-room of the General Post Office that I saw him. It is the same room in which they examine telegrams.

And the said deponent binds himself to attend at Commission to prosecute and give evidence, or otherwise to forfeit to the Crown the sum of 10*l.* sterling.

(signed) P. Wilson.

Taken before me this 21st day of May 1880, at the aforesaid police court in said district.

W. A. Exham,

* One of the Justices for said District.

JOHN BURKE, sworn:—

I AM examiner of messages in the Telegraph Department of the General Post Office. I see the telegram produced. The dates and stamp are cancelled in the Four Courts office. It came from that office on Saturday, the 18th. I make an entry in the book I now produce that that telegram has been sent. By looking at the telegram I say it should have arrived at the General Post Office at about three o'clock, English time.

The telegram should then be placed in a pigeon (sic) hole over the examining bench. It would probably remain there until seven in the evening, when it would, with others, be sent back to the Four Courts Office. It is not locked up. I do not remember seeing the prisoner in the examining room on the 18th instant. I did not speak to him on the subject of this telegram.

And the said deponent binds himself to attend at Commission to prosecute and give evidence, or otherwise to forfeit to the Crown the sum of 10*l.* sterling.

(signed) John Burke.

Taken before me this 21st day of May 1880, at the aforesaid police court in said district.

W. A. Exham,

* One of the Justices for said District.

PAPERS RELATING TO THE

COPY of the BAIL BONDS entered into by the Prisoner, and his Bailsmen.

— 2. —

Police District of Dublin Metropolis, to Wit.

Be it remembered, that Henry Burton, of 34, Xavier Avenue, North Strand Road, in said district, personally came before me, the undersigned, one of the justices of the said police district, and acknowledges himself to be indebted unto our Sovereign Lady the Queen in the sum of two hundred pounds sterling } £. 200.

And also John Kelly, merchant, of 10, Pill Lane, in the said district, personally came before me, the said justice, and acknowledges himself to be indebted unto our said Sovereign Lady the Queen in the sum of one hundred pounds sterling } £. 100.

And also Patrick Egan, merchant, of City Bakery, Store Street, in said district, personally came before me, the said justice, and acknowledges himself to be indebted unto our said Sovereign Lady the Queen in the sum of one hundred pounds sterling } £. 100.

The condition of the above recognizance is such, that if the above bound Henry Burton shall be and appear personally at the Police Court, Lans Quay, South Side, in said district, on the 21st day of May 1880, at 11 o'clock, forenoon, and from day to day, and answer such matters and things as in Her Majesty's behalf shall be objected against him, that he being in the service of the Postmaster General as telegraph clerk, did, on the 17th day of May 1880, at Cork Hill, in said district, unlawfully disclose the contents of a telegram entrusted to the Postmaster General for transmission, wherewith the said Henry Burton stands charged, and all other matters and things relating to the same, until discharged by the Court, and not to depart the Court without license. Then the above recognizance to be void, otherwise to remain in full force.

(signed) *Henry Burton,
John Kelly,
Patrick Egan.*

Taken and acknowledged before me this 20th day of May 1880,

W. A. Exham.

Police District of Dublin Metropolis, to Wit.

The above-named Henry Burton maketh oath and saith, that his usual or actual place of residence is at 34, Xavier Avenue, North Strand Road, in said district, and that his addition, as set forth in the above recognizance, is just and true.

Sworn before me this 20th day of May 1880,

(signed) *Henry Burton.*

W. A. Exham.

Police District of Dublin Metropolis, to Wit.

The above-named John Kelly and Patrick Egan each for himself maketh oath and saith, that he is a householder, and that his name and addition, as set forth in the above recognizance, is his real and true name and addition, and that he is worth the sum of one hundred pounds sterling, for which he is about to be bound in the above recognizance, over and above all his other just debts.

(signed) *John Kelly,
Patrick Egan.*

Sworn before me this 20th day of May 1880,

W. A. Exham

Police District of Dublin Metropolis, to Wit.

— 1. —

Be it remembered, that Henry Burton, telegraph clerk, of 34, Xavier Avenue, North Strand, in said district, personally came before me, the undersigned, one of the justices of the said district, at the metropolitan police court, Inns Quay, in said district, and acknowledges himself to be indebted unto our Sovereign Lady the Queen in the sum of two hundred pounds sterling

£. 200.

And also John Kelly, of 10, Pill Lane, in the County of the City of Dublin aforesaid, merchant, personally came before me, the said justice, and acknowledges himself to be indebted unto our said Sovereign Lady the Queen in the sum of one hundred pounds sterling

£. 100.

And also Patrick Egan, of City Bakery, Stoney Street, in the County of the City of Dublin aforesaid, merchant, personally came before me, the said Justice, and acknowledges himself to be indebted unto our said Sovereign Lady the Queen in the sum of one hundred pounds sterling

£. 100.

The condition of the above recognizance is such, that if the above bound Henry Burton shall be and appear at the next commission of oyer and terminer to be held in aid for the County of the City of Dublin, at Greek Street, in the County of the City of Dublin, to an indictment for that he being employed in the service of Her Majesty's Postmaster General, as a telegraph clerk, did, on the 17th May 1880, at Cork Hill, in said district, unlawfully disclose the contents of a certain telegram entrusted to the Postmaster General for transmission, and answer the same according to the course of said Court, and do and shall appear at the said next sitting of the said Court to answer all such other matters and things as in Her Majesty's behalf shall be objected against him, and so from day to day, and from commission to commission, until discharged by the Court, and not to depart the Court without license. Then the above recognizance to be void, otherwise to remain in full force.

(signed) Henry Burton,
John Kelly,
Patrick Egan.

Taken and acknowledged before me this 21st day of May 1880,

W. A. Esham,
One of the Justices of said District.

Police District of Dublin Metropolis, to Wit.

THE above-named Henry Burton maketh oath and saith, that his usual or actual place of residence is at 34, Xavier Avenue, North Strand, in the County of the City of Dublin, and that his addition, as set forth in the above recognizance, is just and true.

(signed) Henry Burton.

Sworn before me this 21st day of May 1880,

W. A. Esham,
One of the Justices of said District.

Police District of Dublin Metropolis, to Wit.

THE above-named John Kelly and Patrick Egan severally maketh oath and say, that they are householders, and that their names and additions, as set forth in the above recognizance, are their real and true names and additions, and that they are severally worth the sum of two hundred pounds sterling, being double the amount of the sum for which they are about to be bound in the above recognizance, over and above all their other just debts.

(signed) John Kelly,
Patrick Egan.

Sworn before me this 21st day of May 1880,

W. A. Esham,
One of the Justices of said District.

COMMISSION OF OYER AND TERMINER.

THE QUEEN v. HENRY BURTON.

SPECIAL REPORT OF THE TRIAL.

THE Lord Chief Justice opened the Commission on Tuesday, the 8th June 1880, but the case of the Queen v. Burton did not come on for hearing until the 18th of June.

On that day, the prisoner, *Henry Burton*, was arraigned on an indictment, charging that on the 17th of May 1880, he, being a person employed by, and having official duties connected with, the Post Office of the United Kingdom, did unlawfully, and contrary to his duty, make known part of the contents of a telegraphic message, to wit, a telegram from one Charles Fay to one Thomas Fay, entrusted to the Postmaster General for transmission, against the peace and Statute.

Second Count.—For unlawfully disclosing part of the contents of a telegraphic message as in the first count stated.

Third Count.—For on the 15th of May 1880, he did unlawfully intercept the contents of a telegraphic message as in the first count stated.

Fourth Count.—For unlawfully opening a post letter, to wit, a telegraphic message, the property of the Postmaster General, against the peace and Statute.

Messrs. *Wm. O'Brien*, Q.C., *Jesse Atkinson*, Q.C., and *Rydland*, instructed by Mr. *Buller-Gage*, solicitor to the Post Office, prosecuted on the part of the Postmaster General.

Dr. *Boyd*, Q.C., and Mr. *Michael Crean*, instructed by Mr. *J. C. Keats*, solicitor, defended.

Mr. *O'Brien*, Q.C., in stating the case to the jury said:—My Lord and gentlemen of the jury, I have to lay before you in a very brief statement, the facts on which the charge is preferred against the young man who is now accused. This is a prosecution instituted by public authority for the purpose of preserving the Post Office as a means of telegraphic communications, from the violation of the secrecy which it always was supposed to attach to it. If the offence be not altogether, as there is reason to suppose, new in commission, it is certainly one that, now, for the first time, has been made the subject of public legal proceedings. We all know of how great importance it is for the public convenience, that, as far as possible, communications entrusted to the Post Office by individuals, should be kept secret. Hardly inferior to the security which the laws have established for the protection of persons and property, is the security for personal and private communication made through the Post Office, conveying as it does, constantly, intelligence upon public and official matters of the greatest importance to the public, conveying information upon mercantile dealings, and contracts of great importance to those who are engaged in them, and being made the vehicle, so often, of personal and private communications of the most urgent and deepest moment, and it is because the preservation of that vehicle of intelligence is one of the greatest interest to the community, that the Crown attach great and deep importance to this prosecution, for the widest alarm and apprehension would be caused, and a great wound would be inflicted on the public confidence if it were supposed that the trust reposed in the Post Office, were capable of any violation. In order, as far

as possible, to guard against a danger of that kind, when the Post Office Department, for the first time, acquired the command of the telegraph system of the country it was enacted by express law, that "Any person having official duties connected with the Post Office, or acting on the part of the Postmaster General, who shall, contrary to his duty, disclose or in any way make known, or intercept, the contents or any part of the contents of any telegraphic message or any message entrusted to the Postmaster General for the purpose of transmission, shall, in England and in Ireland, be guilty of a misdemeanour, and in Scotland, of a crime and offence, and shall, upon conviction, be subject to imprisonment for a term, not exceeding 12 calendar months, and the Postmaster General shall make regulations to carry out the intentions of this section, and to prevent the improper use by any person in his employment, or acting on his behalf, of any knowledge he may acquire of the contents of any telegraphic message." And it was the intention of that Act that it should be further carried out by express declaration, and, of course, it was well known, the law was well known, and the regulation was well known, as they are known to the entire community, that forbid any person connected with the post office to infringe on the secrecy of this telegraphic communication. The danger is a very great one, and it is extremely difficult to guard against by all the vigilance that the authorities can command. The offence is one that may be committed in secret, and for that reason, in proportion to the difficulty of detection, it is the duty of the Crown to make it the subject of the most rigorous and determined enquiry. Now, the transaction to which this charge relates,

lates, occurred on the 13th of May. On that day a Mr. St. John Brenon, who lives in this city or neighbourhood, and who has taken a somewhat prominent part in political or public affairs in this city, handed in a telegraphic message in the sub-office, in the neighbourhood of the Four Courts, about the hour of half-past two o'clock. Now, to follow, as far as possible, the discreet and judicious course that was adopted at the Post Office, and not to interfere, even for the purposes of public inquiry, with that confidence and secrecy which this prosecution is instituted to maintain and guard. I shall not read the telegram myself, but will give my learned friends an opportunity of seeing it for the interests of their client, and it shall also be seen by his Lordship and the jury. That message purported to come from Mr. Charles Fay, the Member for Cavan, and it was directed to Mr. Thomas Fay of the Ulster Bank (q. Muster) Trim. Mr. Charles Fay's influence, or his family influence, was supposed to extend, with good reason, to other counties than that which he represented himself, and Mr. Brenon having some idea of becoming a candidate for Meath, sought his influential support, and Mr. Fay gave him authority to send, in his name, this message to his brother. It was handed in about half-past two o'clock; as nearly as I can understand from my instructions, it was handed in at that hour at the sub-office attached to the post office, Four Courts, and it never occurred to Mr. Brenon or to Mr. Fay, that it had not been transmitted with all the usual secrecy, free from the danger of personal curiosity or from other motives, of its contents being disclosed, till the succeeding Monday, when that idea was dispelled, and it was revealed in a striking and curious manner, that this system of telegraphic communication was not, in that instant at all events, free from dangerous invasion. On that day Mr. Brenon was engaged in attending a meeting of the Irish Parliamentary party, which was held, I think, in the City Hall. I suppose he was there with a view to some interest in the discussion that was likely to take place there, and possibly with a view to his own personal canvass, or because of his own political views, and while his attention was otherwise directed, he found his hand suddenly pressed by some person whom he did not know. Whether he then saw the person who made use of this mode of communication, I am not, at present, prepared to state. He did not, for the time, give heed to it, although he then understood that it indicated a desire on the part of some person to have personal communication with him, but he was afterwards called by the man who is now at the bar, and who then addressed him and said, calling him by the name that he supposed to be his, "Mr. Healy." I must give you the exact words of the deposition. Mr. Healy, he did not call him Healy at that time, "Mr. Fay," he said, "is no friend of yours, he is putting up a man to oppose you in Meath. I know it because I am a telegraph clerk, and the telegrams pass through my hands. Because I am a Purblind I give you this information, but if it were known I would be ruined. He telephoned to his brother who is in a bank or something in Meath. He is running a Mr. St. John Brenon against you." I said "Umph!" He appears to have had a conversation with him then and he said "Mr. St. John Brenon is a fellow from Kingstown, and Fay

says he is a man of means." Then I asked him "Who is this Mr. St. John Brenon?" He replied "He is a grocer's man, he stood for Westmeath against Mr. T. D. Sullivan, and is a vintner's man," that is (said counsel), that he was opposed to the Permissive Prohibitory Law.

Dr. Boyd, Q.C. (in a rather low tone), he is more like a hairdresser's man.

Mr. O'Brien, Q.C., and he follows up this by saying "I tell you this because I know you are Mr. Healy." Counsel said Mr. Healy holds a close personal relation with one of the political leaders of Ireland. Mr. Brenon responded and said, "What is your name," and I took a good look at him. He replied "Burton, I am a telegraph clerk." He then said to me, "Well, I know you are Mr. Healy," I said "Umph!" I said "I think you had best not be seen speaking to me." I can identify the man. I see the telegram now produced. That telegram was written by me at the instance, and with the authority of Mr. Charles Fay, the sender. I handed it in at the Four Courts telegraph office on Saturday the 13th instant. Counsel then said, now, in addition to those expressions which were the subject of the deposition made, another expression was made use of by the accused to Mr. Brenon, and which appeared upon his cross-examination in the police office, for he stated the name of a gentleman to whom, he said, he told everything; he said "I tell everything to him, he has been a father to me," or he used some expression befitting the acknowledgement of personal kindness. That gentleman cannot be affected by any communication made in the statements of the accused, but it is necessary for me to refer to that; it influences in the mind of the accused the full sense of what he was doing, that he was making a disclosure that he should not have made, and, at all events, he was seen in communication with that gentleman. Having this startling communication made to him, and discerning its full and serious importance, Mr. Brenon applied to the Post Office authorities and complained of this violation of his confidence. And the authorities of the Post Office were not altogether taken by surprise, but attached the greatest importance to his communication. Mr. Brenon was very desirous, or he would have been well pleased if the matter were allowed to drop, but a public department, the duties of which had been so grossly and seriously violated, could not allow that course to be taken, and Mr. Baillie-Gage, solicitor to the department, caused Mr. Brenon to understand that the matter had passed from his hands, and that it was now in the hands of the Post Office authorities who would pursue it to the last. This gentleman had a right to complain, and a grave right to complain, of the wrong that had been done to him, and if he had not complained, and if, either from motives of personal interest, or from indolence, or from some other cause, he abstained from making the complaint, he would have laid himself open to real and well-founded censure; but he was not desirous to go beyond his own well-founded complaint, and it was the actual pressure of the authorities that made him take any further part in the matter. On the succeeding Monday or Tuesday, the traverser was arrested upon this charge.

Dr. Boyd, Q.C.] On Thursday.

Mr. O'Brien.] On Thursday he was arrested. It will appear to you, beyond doubt, that he was in the post office on the Saturday when that telegram was delivered. According to the ordinary course, when a message is delivered by one of the sub-stations it is transmitted by a postman to the Post Office. It is then delivered over to the clerk, whose duty it is to send the message. This message was delivered to the clerk to transmit. When it was transmitted it was then laid on the bench, where the examining clerk proceeds to have the particulars of it recorded, and the place where it is put is quite close to where Mr. Burton, according to his ordinary duty, was engaged, where he had the fullest opportunity, if any evidence were required to satisfy you that he had the opportunity, and the best proof of his having that opportunity is that he used it, of seeing this message. Either a copy of the message, or the original itself, was returned that evening to the Four Courts, the particulars of it being preserved. He was absent on Monday, the day of the meeting. He came upon duty at four o'clock. Possibly his interest in public affairs led him in the meantime to the City Hall. Now, I am somewhat at a loss, looking at the whole complexion of this case; I am at a loss to see what kind of evidence the prisoner can present to you in order to acquit himself of this charge. None can be suggested but that there was either some extraordinary or incredible mistake on the part of Mr. St. John Brenon, or some still more extraordinary or incredible wickedness on his part in inventing a foul accusation. The accused informed him he was a telegraph clerk, and he told him his name

was Burton, and he disclosed to him the contents, in substance, of that telegraph message. You will have it before you, and he used some of the very identical expressions contained in it, and he states the position, the locality, and the occupation of the person to whom the message was sent; that he was engaged in a bank in Trim, in Meath, Mr. Fay's connection. Even on the statement, his own expression, it would be impossible that Mr. Brenon could have been under a mistake. The matter fixes his situation. He saw the mistake this man had made, and his attention was arrested by the startling communication he made to him, and no matter what amount of capacity he possessed he could not possibly have been under any delusion about it. When the prisoner was arrested, Mr. Brenon accompanied one of the officers of the Post Office to the instrument-room, where there were not less than 60 clerks engaged, and he was anxious that no suspicion could be thrown on his identification; he went into where those 60 clerks were, and he at once recognised the prisoner, and his recognition and identification fell upon a second class clerk, who had informed him of his occupation, and that his name was Burton. That is an outline of the case, and I submit it will be your duty on these facts, without the possibility of evasion of your responsibility, to find the prisoner guilty of the offence laid to his charge. He is not to be found guilty except upon the grounds of his own transgression; that verdict of guilty must be found by you because he was guilty, and it is for you to say "Yes" or "No," whether he was guilty of the offence charged against him.

Miss JOSEPHINE PLUNKETT, Examined by Mr. Atkinson, Q.C.

You were in charge of the telegraph office at the Four Courts on Saturday, the 15th?—I don't recollect the date.

Do you remember seeing a telegram?—A gentleman handed me a message from Mr. Charles Fay to Mr. Thomas Fay.

Do you remember the date?—It was on Whitson Saturday.

Did you make any suggestion in reference to the telegram?—I said he could use the word "immediately" for the words "at once."

Is that the telegram? (*Telegrams handed to witness.*) This is the telegram.

Do you know the gentleman who gave it to you?—I think I saw him here. (*Witness looked round and pointed to Mr. St. John Brenon.*)

What time did you receive it?—About half-past two o'clock; I then handed it to a tube boy.

What kind of communication is there from the office at the Four Courts to the Post Office in Sackville-street?—It was forwarded by pneumatic tube.

When should it arrive there?—About two minutes after.

Was it returned to you in the evening?—It was returned in the evening from the General Post Office between seven and eight o'clock; I kept it then.

This is the telegram you took?—This is the telegram I took in.

Cross-examined by Dr. Boyd, Q.C.

Did you put any mark on that showing that you received it?—My writing is on it showing that I received it. "B L" is on it to denote 2.30 p.m. "B" is two o'clock, and the "L" is 30.

Mr. O'Brien, Q.C.] How does the "L" represent 30?—The "L" stands for 55, and 2.55 English time is half-past two o'clock Irish time. "L" stands for 55?—For 55.

Dr. Boyd.] A remarkable evidence of circumlocution when we must take time from England. (*To witness.*) You received it at 2.30 or earlier?—Yes, about two minutes earlier. I then handed it to the boy, who sent it by pneumatic tube to the Post Office. It would arrive at the Post Office about half-past two o'clock.

"B L" would stand for your receipt?

Mr. O'Brien.] It sometimes stands for barrister-at-law. (Laughter.)

Dr. Boyd.] Is there any mark on that to show when you got it back?—At 3.38 it was sent on to Trim.

Is there any mark put on it by yourself when you received that back from the Post Office?—None; I received it with others.

Are you certain it was as late as seven o'clock when it came back?—It was after seven; it was nearer to eight o'clock.

By Mr. O'Brien, Q.C.] Do they keep you on duty till seven o'clock?—Yes, till eight o'clock.

Mr. CHARLES J. FAY, M.P., was then called.

Dr. Bayd objected, and said that Mr. Fay's name was not put on the back of the indictment as one of the witnesses to be examined.

The Chief Justice ruled that counsel for the prosecution had the right to examine him.

Mr. FAY, M.P., was then Examined by Mr. O'Brien, Q.C.

Mr. FAY, you heard of that message?

Dr. Bayd.] Did you ever see it before?—I saw it once.

By Mr. O'Brien.] Did you give authority to Mr. St. John Breton to send that in your name? —I gave him authority, in general terms, for the language that is used in it.

To Mr. St. John Breton.] I did not dictate the words.

The Chief Justice.] You did not dictate them? —I did not dictate them.

Did you make a communication to that effect? —Yes.

By Mr. O'Brien.] You know Mr. Breton, here in court? —Very well; but in consequence of a statement made here by Mr. O'Brien I must say that that telegram was not sent to my brother to request him to use his influence.

The Chief Justice.] You gave him authority to send the telegram? —Yes, in general terms, but not to request my brother to use his influence, for my brother would not use his influence for anybody.

Cross-examined by Mr. Cress.

Mr. Fay, you stated you did not dictate that telegram? —No.

How long have you known Mr. St. John Breton? —Five or six years.

May I ask you if you approve of his political principles?

Mr. O'Brien objected to the question.

Mr. Cress.] I impeach this telegram as one which was not authorised by Mr. Fay, and I ask Mr. Fay if he approves of Mr. Breton's political principles. I think I am entitled to ask that question.

The Chief Justice said he differed from Mr. Cress in that opinion.

Mr. Cress.] This telegram purports to have been sent by Mr. Fay. It contains matters describing Mr. Breton, and approving of his candidature of a constituency, and I say that Mr. Fay never authorised that telegram.

The Chief Justice.] That is not the question here. The question is, whether the terms of that telegram were disclosed by the defendant. The telegram may have wholly misrepresented—

Mr. Cress.] Precisely, and this is a vital portion of the case. The allegation is that this was a telegram from Mr. Fay to his brother. That is the case for the prosecution. We contend it was no such thing. We contend that Mr. Fay was not the author of this telegram, but that Mr. Breton was the author of the telegram, and that he was the sender of it, and, therefore, in asking the question whether he approves of the political principles of Mr. Breton, I think it is clearly pertinent to the case.

The Chief Justice.] The telegram purports to be a telegram from one Charles Fay to one Thomas Fay.

Mr. Cress.] We impeach the accuracy of that statement. We say it was not from Charles Fay to Thomas Fay, but that it was a telegram from Mr. Breton to Mr. Thomas Fay.

The Chief Justice (to Mr. Cress).] You say you gave authority in general terms to Mr. Breton to send the telegram? —Yes, my Lord.

You have seen the telegram? —Yes.

And that was substantially the message you authorised him to send? —Substantially, not verbally.

Substantially you authorised him to send a message, and that telegram substantially corresponds with the authority you gave him? —Yes.

By Mr. Cress.] Then you did not dictate the telegram? —No.

Have you ever heard Mr. Breton make a speech?

Mr. O'Brien objected.

The Chief Justice.] It may or may not have a bearing on the case. It is impossible at present to know whether it may not. I cannot tell what the question is.

Dr. Bayd, Q.C.] If your Lordship reads the telegram you will see the object of the question.

Mr. Cress.] I will answer the question if his Lordship says it is relevant.

The Chief Justice.] Did you hear him make a speech? —Yes, my Lord, several.

Mr. Cress.] Do you consider Mr. Breton is a great orator? —I heard him speak several times.

Several times? —Several times.

Mr. O'Brien objected.

Mr. Cress.] At the commencement of this case I object to Mr. O'Brien standing up at every question and laughing and sneering.

The Chief Justice said he deprecated that kind of altercation between counsel.

Mr. Cress (to Mr. Cress).] Do you consider Mr. Breton an orator? —

Mr. Fay.] Is the question relevant?

The Chief Justice.] Whether he approved or disapproved of Mr. Breton's political principles is not a matter relevant to the case.

Mr. Cress.] It is relevant, my Lord. The case for the Crown is that this was a telegram from Mr. Fay to his brother, and in that telegram there is a statement "Mr. Breton is an orator." I want, therefore, to ask Mr. Fay whether he considers Mr. Breton is an orator.

PAPERS RELATING TO THE

The *Chief Justice.*] He authorised Mr. Brenon to send a telegram, and he says that that telegram substantially corresponds with the authority he gave him.

Mr. Crean.] I submit, my Lord, I am entitled to ask the question.

The *Chief Justice.*] You are entitled to put any question relevant to the case.

Mr. Crean.] When Mr. Fay says that the telegram substantially corresponds with the authority he gave him, I submit I am entitled to ask the question, whether he considers that the statements in the telegram are accurate or otherwise.

The *Chief Justice.*] He said so, but whether he considers this gentleman an orator or not has no bearing on the case.

Mr. Crean.] That is a statement in the telegram.

The *Chief Justice.*] Mr. Brenon makes speeches, and an orator is a man who makes speeches (laughter).

Examination resumed.

Did you recommend Mr. Brenon as a candidate?—No; I was merely asking a question.

Your statement is, that in authorising Mr. Brenon to send that telegram, you did not mean to recommend him as as a candidate?—I asked a question whether a man with certain qualifications would be adopted.

Did you tell him, when authorising him to send the telegram, that you did not intend to recommend him as a Pluralisatory candidate?—No; I asked the question, whether a man with certain qualifications would be likely to be adopted. It was merely a question not a recommendation.

You have read the telegram?—I have read the telegram. I got a negative reply to it.

In your opinion, does that telegram accurately represent the authority you gave?—

Mr. O'Brien again objected. This, he said, was an indictment against the man at the bar for violating the secrecy of a message. If it purports to be sent from Mr. Charles Fay to Mr. Thomas Fay, and that it represents substantially the authority that Mr. Fay gave to Mr. Brenon, whether Mr. Brenon states he is an orator or not, is not a matter relevant to the inquiry.

The *Chief Justice.*] The witness already said, distinctly, that that telegraphic message did substantially represent the authority he gave Mr. Brenon.

Mr. Crean.] Mr. Fay no doubt stated that, but I think, from Mr. Fay's subsequent answers, that the telegram was not exactly what he authorised him to state.

The *Chief Justice.*] He said he did not intend to recommend him as a candidate, but that he intended to ask a question.

Mr. Fay (witness).] Yes, certain circumstances were put before my brother, who was asked the question whether a can-

diate coming forward under those circumstances would have a chance of adoption. It is merely asking his opinion only.

Dr. Boyd.] The whole of this prosecution depends on the evidence of Mr. St. John Brenon, whose evidence from beginning to end I impeach as not accurate.

The *Chief Justice.*] What you say, is that the object you had in sending the message was not to recommend Mr. Brenon as a candidate, but to ascertain the opinion of your brother?—Yes, my Lord, and I think the telegram shows that.

Mr. Crean then proposed to read the telegram.

The *Chief Justice* thought he should not read it.

Mr. Fay said he desired to stop that prosecution by refusing to allow the message to be read.

Mr. O'Brien urged that prisoner's counsel should not insist on reading the message.

Mr. Crean.] Mr. O'Brien need not make these appeals to me. I believe it is my duty to my client to read it, and I will do so irrespective of consequences. The telegram is as follows: "Charles Fay, 9, Merchant's Quay, Dublin, to Thomas Fay, Ulster Bank, Trim.—My friend, Edward St. John Brenon, who stood for Westmeath, would be best man for Meath. He has means—an orator. He worked with me the last Cavan contest. At Westmeath he had many priests supporting him, but retired, deferring to the decision of the majority. Is far better man than Bealy. Let me know your opinion immediately. If favourable, will both go to Trim to-night or tomorrow."

Examination continued.

Now do you still adhere to the answer you have given that that was merely a question asked of Mr. Thomas Fay, or do you think it was a recommendation of Mr. St. John Brenon's character?—

The *Chief Justice.*] He described it with perfect accuracy.

Mr. Fay.] I would not have worded it in that way. I think it substantially conveys the meaning I intended.

Mr. Crean.] Is that a question or a recommendation?—I would have made it more of a question. It was a question directed to a man who, notoriously, would not interfere.

Did you get a reply to that?—I got a reply in the negative, stating that he would not have a chance, for reasons I understand.

When did you get the reply?—The reply was received about three or four o'clock the same day.

The *Chief Justice.*] This telegram was received about half-past two o'clock?—It was received about three or four o'clock. The answer was received by Mr. Brenon. I directed him, if a telegram came, to open it, and he called and opened it, and he showed it to me afterwards.

JOSEPH MORRIS, Examined by Mr. Ryland.

ARE you employed as instrument clerk in the Post Office?—Yes.

Did you see that?—Yes.

Were you employed there on 15th of May last?—Yes.

Is that your writing?—Yes.

Was it your business to tick off messages as they came to the Post Office?—Yes.

Look at that message; did you tick off that?—Yes.

When?—At three o'clock, English time.

Cross-examined by Dr. Boyd, Q.C.

Do you always open telegrams when they come there?—I tick them off when they come out of the tube; the boy at the tube gets them first, and then they are sent to me.

Are they then sent on to their destination?—No; when they come out of the tube I mark them off as having been received; I put them on their boxes and distribute them for their respective stations.

LAURENCE LOUTE, Examined by Mr. O'Brien, Q.C.

YOU are one of the clerks of the Post Office?—Yes.

This message from Charles Fay to Thomas Fay, you telegraphed it?—Yes.

At what time?—At three o'clock, English time.

Can you state from your knowledge whether it was received at Trim?—I don't know whether it was received at Trim; it was at Navan.

You telegraphed to Navan?—Yes.

To Dr. Boyd, Q.C.] I got an acknowledgement from Navan.

When did you get the message?—It was left at the instrument by a boy.

When they come out of the tube they are received by a boy?—Yes.

That boy hands them to another boy?—Yes.

And that boy takes them off?—Yes.

They are left on a shelf?—Yes.

And then they are distributed to you, the instrument clerk?—Yes.

And so four persons, at least, must have seen it before it comes to you?—Yes.

After it is transmitted through these different boys it comes to you ultimately to be sent to its destination?—Yes.

This then comes to you, and you send it to its destination?—Yes.

Dr. Boyd.] When we are anxious of disclosing, we will show where it came from.

CHARLES DOYLE, Examined by Mr. Atkinson, Q.C.

YOU hold the post of abstract clerk in the office?—Yes.

Did you take duty on the 15th instant?—Yes.

What is your duty?—To make up the messages and put them in their different order, and have the numbers consecutive, one after the other.

After they have been transmitted?—Yes.

The Chief Justice.] Is that according to the hour at which they arrive?—Each message is numbered in consecutive order.

After transmission?—They are numbered in the Four Courts.

Mr. Atkinson, Q.C.] Are they brought from the place where they are telegraphed, from the instrument to the desk to you?—Yes; when they are arranged, they are then put into pigeon-holes; then, when they are to be brought to the Four Courts, they are put into large envelopes, when all the messages are being got in.

What is done with the large envelopes; they are brought to the stations in the evening, to the Four Courts.

The Chief Justice.] Do you mean that the telegraph messages are put into separate envelopes, according to the stations?—All the messages from the same station are put into one envelope; the messages from the different stations are put into different envelopes and sent back to the stations from which they came.

By Mr. Atkinson, Q.C.] About what hour in the evening is that done?—Between seven and eight o'clock generally.

Cross-examined by Mr. Cross.

When the telegrams are transmitted what does he do with the copy?—He puts it on the file there.

What next happens to it?—The messages are taken off the file.

Are they taken immediately?—Sometimes. The messages are taken off the file every half hour after transmission.

The person who takes them off the file, where does he bring them to?—To the abstract desk.

You were acting as the abstract clerk on that evening?—Yes.

A message sent about half-past two o'clock, when should it be transmitted?—About half an hour after.

You numbered them?—They are numbered then, and I put them in order.

What do you do with them then?—I leave them there till they go to the stations. They are put into the pigeon-holes.

The copies of the telegrams from the different stations would make a large parcel?—Yes, according to the number of messages sent.

After they are numbered by you and placed in proper order, and placed in the pigeon hole, what then happens?—I took them out of the pigeon-hole that evening and put them into large envelopes, and brought them to their respective stations. I had only two that evening, one for College Green, and one for the Four Courts.

Each had a pigeon-hole for themselves?—Yes.

You put them into the pigeon-holes?—Yes.

And then in the evening they are sent back to the stations?—Yes.

PAPERS RELATING TO THE

HENRY SHAKLETON, Examined by Mr. Ryland.

ARE you in the Telegraph Department in the General Post Office?—Yes.

Were you on duty on the 15th of May last?

—I was.

Did you sign the attendance book on that day?

—I did.

At what hour?—Within one or two minutes of four o'clock.

By Dr. Boyd.] For yourself?—Yes.

By Mr. Ryland.] What were your hours of duty that day?—From four to half-past seven o'clock.

Did you see Henry Burton on duty that day?—I did; he was on duty that day.

Was it while you were on duty that he was on duty?—Yes.

Is there more than one instrument room?—There is an intelligence room, and the instrument room.

Was your post in the instrument room?—In the intelligence room.

Where was Burton's post that day?—In the intelligence room.

Did you see Burton's signature to the book that day?—I see his name here.

Before or after yours?—After mine.

Immediately after?—Immediately after.

Is that book kept for the purpose of recording the time of going on duty?—Yes.

And it records the time that you went on duty?—Yes.

In the intelligence room, is that where the messages are first received or where they are transmitted? Are the messages from the Four Courts received in the instrument room first? Do they come into the intelligence room?—Yes, when they are collected off the files after being transmitted. The messages are first received from the Four Courts; then they are checked off, and handed by a boy at the tubes to another boy; then another boy takes them to the different instruments from which they are sent off. Then they are filed after being sent; then they are collected and brought into the intelligence room, and then they are put into pigeon holes.

The Chief Justice.] Pigeon holes in the intelligence room?—They are.

By Mr. Ryland.] You say they are filed; is there a wire there?—They are put on a wire.

By Dr. Boyd.] Give me the original telegram?—(The telegram was handed to Dr. Boyd.)

Witness.] They are taken off the box and brought by a boy. They are left in the pigeon-holes till they are returned to the different stations, at the Four Courts and other places.

By Mr. Ryland.] Is there a desk called an abstract desk?—Yes; after the boy receives them he puts them on the abstract desk.

Is it then that the abstract is made?—Yes.

After that they are put into the pigeon-holes?—Yes.

Is the abstract made immediately after, or are they left dormant on the abstract desk or put into the pigeon-holes?—They are all put into the numbers; they are put in in their turn, and then they are put into the box.

Are they left lying on the abstract desk for a length of time, or in the pigeon-holes?—In the pigeon-holes.

They are longer in the pigeon-holes?—Yes.

What do you call the abstract desk?—They are checked over, stamped, and examined; and if a message be not sent—

The Chief Justice.] He was at this abstract desk on that day?—I believe he was.

The messages are examined by the abstract clerk!—Yes.

Then they are afterwards put into the pigeon-holes?—Yes.

By Mr. Ryland.] By looking at these documents can you say at what hour you saw Burton there?—

Dr. Boyd and Mr. Crewe objected, and suggested that the question should be in whose handwriting these documents were.

By Mr. Ryland.] Did you hand them?—Yes, I handed them. They are put on the box; it was his business (the prisoner's) to take them and decipher them.

The Witness in reply to Dr. Boyd, said that some writing on the back was, he should say, Mr. Burton's writing.

Would you know it?—I would not say it always.

Do you see your signature to this telegram?—No.

Do you see Burton's signature?—Yes.

Do you believe that to be his handwriting?—Yes.

Can you, by looking at these documents, tell at what hour he was on duty with you on that Saturday?—

The Chief Justice.] He said he came there about four o'clock, and his own name is written down on the book, and Burton's name is written after his.

Mr. O'Brien, Q.C.] These documents are produced, and there is on them handwriting which states the time when the work was done.

By Mr. Ryland.] When were they copied by Burton?—At 5.22, English time; that is, three minutes to five o'clock.

By Mr. O'Brien, Q.C.] They have the stamp of the day on them?—Yes; May the 15th. It was 5.22, English time; that is three minutes before five o'clock.

The Chief Justice.] Showing that he was there at 5.22?—Yes; there is also one here at 6.31; that would be six minutes after four, Irish time. There is another later—the latest, 7.25. They are all English time.

By Mr. Ryland.] When did you come on duty, or did you come on duty the following Monday?—I did, about four o'clock. I was due at four o'clock, and was on duty from that to 12 o'clock at midnight. (Witness referred to the abstract book.)

Do you know what Burton's hours were that day?—The same.

Did he sign the book on that day?—Yes.

Did you hand this to Burton on the Monday?—I could not swear.

Dr. Boyd said that he would admit the prisoner was there on Saturday, and he would admit he was there on Monday.

You

Cross-examined by Dr. Boyd.

You have been for some time in the Post Office?—About seven years.

And what has been the character of Mr. Burton during the time he was there?—I am only three and a half-years in the Dublin office.

Was he under you all that time?—We have been in that office together.

What was his character from the time you have been acquainted with him?—Very good; from what I know.

I only ask you about what you know; was he attentive to his duties?—Yes.

Early to come and last to leave?—Yes.

And one of the most diligent boys in the office?—Yes.

Do you know whether these telegrams are put on the file; do the files face up or down?—The file is up that way (*Witness showed how it was up.*)

Is the face exposed, or is it put on indiscriminately?—Indiscriminately; when one comes in it is put on the file, and when the next comes in it is put on the top of it.

How many would gather on the file before they are taken off and put on the abstract desk?—It would depend on the work.

In the month of May how many would come from the Post Office?—I have not an idea.

Can you give the information from the books?

—I have not a very great number.

The *Chief Justice.*] Particularly during the elections (laughter.)

Dr. Boyd.] I don't think the Four Courts have much to say to that; some of my friends on the other side might (laughter).

Examination resumed.

I think it would keep a boy busy to keep them all in his head?—Yes.

What instrument was Burton at?—I was in charge of the London wire, and he was writing; I was receiving the slip that comes and breaking it off, and he takes it.

To the *Chief Justice.*] The London news wire is in the intelligence room.

Are they read off in the intelligence-room?—Yes.

This instrument terminates in the intelligence room?—Yes, it is a Wheatstone instrument.

By Dr. Boyd.] The news comes off on a printed slip?—Yes.

The slips come off with telegraphic characters printed on them?—Yes.

When you take it off it is Burton's duty to decipher them?—Yes.

And he did that that day?—Yes.

By the *Chief Justice.*] You receive the messages from London?—From the instrument.

And he deciphers them?—Yes.

Each slip?—Yes.

You received the messages, and he deciphered them?—Yes.

By Dr. Boyd.] And then what comes in telegraphic characters he will decipher and write out?—Yes; it comes at the rate of about thirty words a minute.

Thirty words a minute; This news coming at that rate, will take up a good part of a man's time at the office?—Yes.

The slips came on the 15th; the London intelligence, and not the private telegraphic communication?—Yes.

How far was the place where you and he were engaged from the place where the private messages would go to?—

The *Chief Justice.*] These private messages don't go into the intelligence department?—They are brought into the abstract desk which is in the intelligence department.

How far is the abstract desk from where Burton was at work that day?—From seven to ten yards, perhaps less.

By Dr. Boyd.] How many clerks have you in the office?—I don't know exactly; I suppose about 150.

How many clerks would have their bodies interposed between where Burton was taking these slips and the abstract desk?—It would be hard to say.

Several, at all events?—Yes, several.

And they, of course, attending to their duties?—Yes.

I suppose these pigeon-holes are the ordinary pigeon-holes, like those in a solicitor's office?—Yes.

And unless a man was a pigeon he could not go into the right one there?—No.

So that the only opportunity a man would have of seeing a private telegram would be when it would be lying on the abstract desk, before it was put into the pigeon-hole?—No; there are other opportunities.

Give me a sample?—A clerk could see a message on the peg when he is passing down the room.

The message is on these pages of paper. Could any man passing by, read that message from beginning to end, and tell what is in it?—No.

How long would these messages remain on the abstract desk, on an average, before they would be put into the pigeon-holes?—About ten minutes or a quarter of an hour.

And that mixed up with all the other messages that came into the instrument room?—Yes.

I believe that the boys in that intelligence room are kept very busy?—Yes.

And have not much time to be gossiping about?—No.

Or reading telegrams over other people's shoulders?—No.

MR. EDWARD ST. JOHN BRENNON, Examined by MR. O'BRIEN, Q.C.

You had seen Mr. Charles Fay, the Member for Cavan, on this Saturday before you sent this message?—I had.

The message was in your own handwriting?—Yes; that is in my handwriting.

Was it in the Post Office at the Four Courts you wrote it?—Yes.

47.

And you sent it to the person to whom it was directed—to Mr. Fay, in Trim?—Yes.

You received the answer to it?—That is to say, Mr. Fay got the answer at his office, and he delegated me to open it.

Does this message itself accurately represent the time you gave it into the Post Office?—I cannot

cannot tell what time this was, but from the evidence it was between half-past two, and three o'clock—some time between. That young lady who was examined here as a witness was the young lady to whom I gave the telegram.

On the succeeding Monday you were at the City Hall?—I was there as a listener.

By the *Chief Justice*.] At what time?—It was Monday, the 17th, between the hours of two and three o'clock.

By Mr. O'Brien, q.c.] While you were there was there anything done to yourself that attracted your attention?—Yes, I went to the glass door to beckon to Mr. Fay, and a man pressed my hand.

The *Chief Justice*.] Somebody pressed your hand?—Somebody pressed my hand.

Mr. O'Brien.] You think it was?—My hands were gloved at the time.

Dr. Boyd.] We had not an opportunity of seeing the diamonds then.

Mr. O'Brien, q.c.] Do you know who pressed your hand?—I cannot tell.

You did not see the person?—No.

Now, what interval elapsed between the time when that was being done, and what next happened?—About two or three minutes after a young man came to me, where I was standing, and beckoned to me thus. (*Witness indicates the manner.*)

Were you in the doorway at the time?—I was in the doorway at the time.

Was the meeting then proceeding?—Yes.

When he beckoned to you in the way you described, where did you go to?—We went into the portion of the hall where the balcony begins.

Is that an upper story?—It is, it was the first time I was in the place, it was in the general entrance.

Who was the person?—That man (pointing to the prisoner) was the person.

Now, when you went out tell what passed between you?—The first word he said to me was, "Mr. Fay is no friend of yours."

What next?—He said he was a telegraph clerk, and that all the telegrams passed through his hands, "Because I am a Parnellite," these are the words, almost verbatim, because I gave them in the police office, "Because I am a Parnellite I tell you this," a follower of Mr. Parnell.

Mr. Cram.] You need not put in a new interpretation, we can understand plain language.

The *Chief Justice*.] He said, "I tell you this because I am a Parnellite."

Mr. O'Brien.] Go on Mr. Brenon.

Witness.] "I give you this information instead of "I tell you this," because I am a Parnellite I give you this information, but if it were known I would be ruined."

Mr. O'Brien.] What further?

Witness.] "He is running a Mr. St. John Brenon against you."

Dr. Boyd.] You forgot your own name?

Witness resumed.] "He sent a telegram to his brother who is in a bank or something in Belfast." He says, "I think St. John Brenon is a fellow from Kingstown, and Fay says he is a man of means." I then asked him who this St. John Brenon was, and he said "He is a fellow from Kingstown, he is a grocer's man. He

stood for Westmeath against Mr. T. D. Sullivan, and is a voter's man. I let Mr. Sullivan know everything because he has been a second father to me." I then asked him what was his name. I think before he said to me, "I tell you this because I know you are Mr. Henly." That was the first communication he made to me. When I heard that I asked him, "What is your name?" and he said, "Burton, I am a telegraph clerk." He again informed me that he knew I was Mr. Henly, and then I said to him "You had best not be seen speaking to me," and I left him.

Mr. O'Brien.] Did you know Mr. Henly?—Yes; he was Mr. Maxwell's secretary.

After this occurrence did you make any representation to the Post Office or anything?—I did the next day, on Tuesday.

After the conversation you told us of, when did you next see Henry Burton?—The second day of the Parliamentary meeting (the meeting of Irish members in the City Hall), I saw him talking when I came out of the place, and on passing I saluted Mr. Sexton, the present Member for Sligo. The instant I did, Mr. Burton followed me. I went into the writing room, and then I saw Burton in communication with Mr. T. D. Sullivan, the present Member for Meath. That was on the second day; I saw him talking to Mr. Sullivan that day; he first spoke to Mr. Sexton, and having seen him he spoke to Mr. Sullivan; I saw the prisoner speak to Mr. Sexton first and then to Mr. Sullivan, who had his back to the glass partition of the partition, and Mr. Burton was standing before him in earnest conversation.

What hour was that?—It was Tuesday, it was about the same hour.

At what hour did the conversation take place?—It was about a quarter to three o'clock.

How long did it last?—About from three to five minutes.

The conversation on Monday and the conversation on Tuesday were about the same hour?—Yes.

You made a complaint?—Yes; I went to Mr. Bowler.

What was the next occasion on which you saw the accused?—In the instrument room, I was told.

How long after you made the complaint?—I think it was Thursday.

Did anybody accompany you there?—Yes, Mr. Anderson, the Controller.

And you went into the instrument room, was it?—Yes.

About how many persons were then present?—I could not say.

About?—Well, I think there was something like 100; I just glanced round.

Did you then point out Henry Burton?—I went about five paces from the entrance door, and I looked round and saw Burton with a side glance, at the far end of the table, and I whispered to Mr. Anderson, "There he is," and walked out.

Do you now state that he is the person who made this communication to you?—Yes.

Cross-examined by Dr. Boyd, q.c.

Mr. Brenon, have you always been a resident in Ireland?—Not always.

Had the City of Rome the felicity of your having

having had, at one time, a habitation there?—I had the honour of being a resident there.

What business had you in Rome?—That is my business.

On your oath did you keep a "hell" in Rome?—On my oath I never did a dishonourable action in my life.

Nor keep a hell there!—

Mr. O'Brien objected to Dr. Boyd's energetic style of cross-examination.

The Chief Justice.] There is no occasion for this violence.

Dr. Boyd [to Witness]. Did you keep a hell, a gambling hell, in Rome?—No, never.

What were you doing there?—Reading, studying, and writing.

Do you swear that?—I swear that on my solemn oath.

How long were you there?—From 1865 to 1871 or 1872.

Following any business or occupation?—Following some occupation, honourable occupation.

What was the honourable occupation?—I wrote a great deal.

For "Mayfair," or something else?—Not at that time.

Where did you go after leaving Rome?—To Naples; well, I came back to Ireland.

Did you follow any business or profession?—Yes.

What was it?—I was a coach.

Following horses?—I coached as a grinder, and I was a professional musician for some years, an organist and a pianist, well known in Dublin to be such, and also in Rome. I was organist to St. James's Church here, and I was organist to the Unitarian Church in Stephen's Green.

These were the only occupations you followed?—I have been writing since I was 17.

Books of poetry?—You are good enough to call them poetry. I wrote prose and verse.

All of a somewhat loose description?—That is a matter of opinion. It has nothing to do with the case.

Dr. Boyd.] You don't like this; do you know Ambrosia Amoris?—I have heard of that name.

Is that all you know of it?—That is all I know, practically, of the Ambrosia Amoris.

Did you write that book?—Yes, sir, I did write it.

I believe at that time you rejoiced in the name of Mr. Brennan?—Yes.

And now you are Mr. St. John Bremen?—Yes.

Sometimes people do change their names?—I have not changed my name.

Edward Bremen into St. John?—It is not a change of "Edward" into "St. John."

I believe that subsequently you were a writer for "Mayfair"?—Yes, I wrote for "Mayfair."

Did you write that (*a printed paper handed to Witness*)?—

The Chief Justice.] What is "Mayfair"?

Dr. Boyd, q.o.] It is a publication in London that some gentlemen of loose character write for at times.

Witness (after looking at the paper).] That is not out of "Mayfair."

Did you write that?—

Witness (to the Chief Justice).] My Lord, am I to answer this?—

Dr. Boyd.] Indeed you will; it is an exposition of your character.

Witness.] Do you want to impeach my veracity?

Dr. Boyd.] Yes, and your character.

Witness.] I did not write that as published.

Are you the writer of that article, sir?—I did not write that article as published.

Do you mean that parts of the article that you wrote were so bad that they were excluded by the paper?—No.

Look at the alterations (Dr. Boyd handed Witness a copy of the article in question, and asked Witness to point out where it was changed) —

Mr. O'Brien objected.

The Chief Justice said he thought Dr. Boyd might ask the gentleman whether he wrote such an article.

Mr. O'Brien.] He stated he did not write the article as published, and I press your Lordship to rule whether this kind of evidence is relevant or not.

The Chief Justice allowed the examination.

Dr. Boyd (to Witness).] Did you write an article in "Mayfair" of that purport?—I did. What is the difference?—It is not much.

Mr. O'Brien again objected.

The Chief Justice.] If you can show that that article contains anything discreditable in it, read it, and then ask the gentleman whether he wrote it.

Dr. Boyd.] He has got it before him. He says there are only verbal differences.

Examination resumed.

Did you write that passage marked?—Well, I have to compare it; it is two years since I wrote it; it was written in July 1878, when sensational articles were being written. (Witness having looked at it, said, "Yes.")

Now listen to this: he admits he wrote this. Is an article termed "The Morals of Merrion Square," and published in "Mayfair" in London, he wrote this: "Flirtation, intrigue, courtship, and scandal mingle in joyous revelry, sometimes even to abandonment; and notwithstanding the virtues for which the daughters of the Green Isle are celebrated, many an incident occurs that a certain *esprit de pays* obliges the natives to smother. Imagine Dublin Castle turned into a *Spaniard*." Is not that a brothel; had Latin for brothel?—I used the Latin word *Spaniard*.

Dr. Boyd.] "Brothel" is the translation of the Latin word *Spaniard*. (Dr. Boyd read on: "Imagine Dublin Castle turned into a *Spaniard*, St. Patrick's Cathedral into a house of assignation, and the porticoes of a house of worship into an improvised *post restaurant*. Difficult as it may be to realize such a state of things to the imagination, still there is a sufficiently rational circumstance in facts to make us believe this state of things not wholly impossible. One of the favourite complaints of Irish girls is phthisis; but it is phthisis of the heart, and when they cannot succeed in meeting their lovers on such natural and tangible grounds as shopping, getting a book from Green's or Smith's library, they not infrequently resort to the stratagem of being unwell." The affection is usually in the chest. After the first visit to a doctor of fashion

in 'the square,' in which they are accompanied by 'mamas' or 'aunties,' they are allowed to go alone, and then, for the paltry sum of one guinea now and again, they have the gratification of meeting their lovers as often as they list; but with the married ladies it is different. With the foresight of 'women of the world,' they avoid those resorts where bachelors most do congregate, and select either the Phoenix Park, or somewhere down the Bray Line, but never the East Pier of Kingstown. They believe with Othello, that 'He that is robbed, not wanting what is stolen, lets him not know it, and he is not robbed at all.' It is a known fact amongst the philosophers of Dublin that the women too frequently abuse their husbands' belief in the spotless virtue of their maids and mistresses." Counsel then asked, Is that your opinion of the morals of the ladies of Merrion-square?—It is not fair to me to read out a portion of that article.

The Lord Chief Justice.] We have had enough of it.

Dr. Boyd (reading).] "They are to be found in the modestly robed wife of a parson, as well as in the fashionable coquette of a Castle official." Are you the writer of that infamous slander on the ladies of Dublin?

Witness.] Read the opening of the article, and then I will give the explanation.

Dr. Boyd then read the following:—"The object in life of medical men in Dublin is a house in Merrion-square, a carriage and pair of horses, and a butler. Should the Irish doctor of *Accoucheurs* attain to this equivocal dignity, he is fortunate. I say 'equivocal' because those baubles generally necessitate the curtailment of those more common comforts of life that Englishmen, as a rule, aspire to. As show and ostentation are the dominant failings of professional Irishmen, it is not to be wondered at that they receive a proportionate amount of encouragement from the undesignated portion in the community. A man with a meagre stipend in a small official capacity, when any member of his household is unwell, wishes that member to be attended by a physician who can awaken the neighbours to some sense of his dignity."

Counsel then asked, Do you wish me to read that part of the article where you say that the bachelors of Merrion-square are a discredit?

Witness said he did not. Then addressing himself to the Chief Justice, he said that at the time several of these articles were written there was a passion in England for sensational articles, and the Irish question was prominent at the same time. He then wrote that article, but he should confess that there were some things written in it in the heat of the moment that were possibly not justified altogether.

The Chief Justice.] Not altogether?

Mr. Birrell.] I say, my Lord, not altogether.

Cross-examination.

Now, I think you are the author of a book called "The Witch of Nevel"?—That is the way you pronounce it.

I believe you know the habits of the cardinals and of the ladies who go to confess to them?—I do not.

Did you write that about the cardinal and of the lady who went to confess to him?—This

was a dramatic poem entitled "Bambu and Laetitia Borgia," and when writing it I went simply on facts mentioned by Maratoni and other writers.

Dr. Boyd.] You dedicated that book to your wife, being highly moral?—Certainly. (To the Chief Justice.) My Lord, you might as well call Shakespeare immoral for having written "Measure for Measure."

Dr. Boyd.] Do you know Mr. T. D. Sullivan?—I do.

Perhaps you rejoice in the acquaintance of Mr. Philip Callan?—I rejoice in the acquaintance, as you say, of Mr. Philip Callan.

Do you know that Mr. Sullivan and Mr. Callan, in whose acquaintance you rejoice, are not on particularly good terms?—I learned that from the public press.

You say that this young man said that Mr. T. D. Sullivan was a friend of his?—Yes.

And that he performed the office of second father to him?—Yes, he said so. I never saw him in my life before.

Did anyone go to the Post Office with you?—No.

Do you know that Mr. Callan went to the Post Office?—I subsequently heard it.

Did you suggest to him to go?—No.

Had you any communication with him afterwards?—He dined at my house a couple of nights after. No, he did not dine at my house: we dined, I think, at the Gresham Hotel.

Was it after that you were at the Post Office with Mr. Anderson?—Not with Mr. Anderson, but with Mr. Barker. Mr. Anderson, the Controller, brought me into the machine room. I never saw the prisoner, to my knowledge, before the occasion mentioned.

You say he mistook you for Mr. Healy?—No.

He mentioned to you that which made you know that he mistook you for Mr. Healy. Do you know Mr. Healy?—Yes.

A handsome man?—Chances are six good.

Dr. Boyd asked the witness to speak in the English language.

Witness.] You are an LL.B.

Dr. Boyd.] Never mind what I am. Had you any communication with any of the parties with reference to this gentleman before you saw him; with any of the officials of the Post Office?—Never.

Do you recollect saying that Mr. Fay it was who dictated the telegram to you?—I don't think I said he dictated it.

What did you say?—Oh, I forgot what it was. I said it was—

Did he dictate it?—There are different ways of dictation. I have one idea of dictation.

Did he tell you the words to put into it?—He told me the important words.

Was one of the important words that Mr. Brenon was an orator?—Yes.

And that he was a man of wealth?—He did not say that; he said a man of means, and I modestly put in "some means."

Did you think it would do harm to your station?—I always through my life endeavoured, as much as possible, to speak the truth, and to write the truth; to write what I believe to be the truth.

Did you say Mr. Fay told you the words to be put into the telegram, the words of the telegram?—Yes, so he did.

Did

Did you hear Mr. Fay's evidence, that he did not tell you the words?—No, he did not say that; he told me the substance.

When did he mention Mr. Healy?—Both times at the conversation.

Has Mr. Healy a moustache?—A little bit.
Has he an imperial?

Witness.] What do you call an imperial?

Dr. Boyd.] What do you call that excrescence on your chin?—Well, in Italian we call it a *pappaglio*.

Has Mr. Healy a *pappaglio*?—No.

So that Mr. Healy has only an excuse for a moustache, and has no *pappaglio* (laughter). He dresses well?—He dresses very nicely.

As nicely as Mr. St. John Brenon?—His tailor would say he did; my tailor would say he did not.

Is there any man out of Swift's Hospital who would mistake Mr. Healy for Mr. St. John

Brenon?—Well, really, I must confess I would always think it impossible. It would be a madman's trick, but he evidently did not know me.

Mr. O'Brien.] You said you went to the post office before you saw—

Witness.] I saw Mr. Callan and several other Members of Parliament.

Did you mention this to Mr. Callan and to several others?—

Dr. Boyd objected.

Mr. O'Brien to Dr. Boyd.] With a view of affecting his credit you asked him did he make this communication to Mr. Callan.

Dr. Boyd.] Surely Mr. O'Brien does not mean to—

Mr. O'Brien to *Witness.*] Did you mention it to others?—Immediately I mentioned it to Mr. Poole Mansell—

Dr. Boyd.] I object to this as wholly irrelevant evidence.

MR. ROBERT OGILVIE ANDERSON, Examined by Mr. Addison, Q.C.

You are the Controller in the Post Office?—Yes.

Do you know this intelligence room?—I do.

Do you know the desk called the abstract desk?—Quite.

Do you know the prisoner?—Quite.

Do you know where he sits and works in that room?—I know where he sat on that occasion. I know where he sat on that occasion, on the 15th of May.

How far is the abstract desk from where he sits?—He was about six feet from it at right angles.

Could a person moving up and down have an ample opportunity of seeing the telegram?

The Chief Justice.] We have the distance; six feet, and that is sufficient.

How long have you known the prisoner?—I have known him ever since his appointment; I think since September 1870.

Do you remember Mr. St. John Brenon coming to you on the 17th or 18th?—I do.

He made a communication to you; you need not say what it was?—Yes.

Did you go with him into the instrument room?—Yes.

How many employees were there?—About 60 or 65.

MR. JAMES BOWREE, Examined by Mr. O'Brien, Q.C.

You are the chief clerk in the Secretary's Department relating to the telegraphs?—

Dr. Boyd objected to the form of the question.

Mr. O'Brien.] I asked him what he was.

Witness.] I am a principal clerk in the Secretary's office.

Dr. Boyd objected.

The Chief Justice.] I don't see what objection there is.

Dr. Boyd.] This gentleman has not made an information. His name is not on the book of the bill. We have received no notice of his examination, and therefore I object to his evidence *a priori*.

The Chief Justice.] There is no rule obliging them to do so. It is a matter of propriety and discretion on their part.

67.

Dr. Boyd.] It is a rule that is hardly violated.

Examination resumed.

You are a principal clerk in the Secretary's office?—I am principal clerk in the telegraph branch of the Secretary's office.

You have seen Mr. St. John Brenon there?—Yes.

Did he come to you on Tuesday?—He was brought in to me on business.

What hour of the day did he come to you?—Between three and four o'clock.

Did he make a complaint to you?—He did.

Mr. O'Brien.] Now, my Lord, that is the case for the Crown.

Dr. Boyd then addressed the Chief Justice and said: My Lord, I submit, on the indictment,

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that

that there is no case to go to the jury, and I do so with great confidence. On the third count of the indictment he is charged with opening a letter. There is no such thing as opening any document, nothing proved in any way, nothing alleged, except what was stated by Mr. St. John Breson. Next, that he did disclose the contents of a telegram. Counsel read the section of the Act, 31 & 32 Vict. chap. 100, under which the prosecution was instituted. He then submitted that, communicating to the sender of a telegram the contents of that telegram was not a case of disclosing. To make it an offence at all admissible, the disclosure should be to some person who knew nothing of the matter. The meaning of the word disclose was to make known. It was only a repetition of the words in the Act of Parliament to make known the contents of a telegram. Now Mr. St. John Breson, to whom this communication was alleged to have been made, was the sender of the telegram; there was no disclosure to him of what he did not know before, and, therefore, I submit there is no offence. This is a criminal statute, and must be construed strictly. Your Lordship has only to consider whether the offence specified was committed. Counsel referred to the Alexander case, whether it accrued within the mischief to deal with it as a crime unless it was included within the language used by the Legislature.

The *Chief Justice* said that that point had already been made.

Mr. O'Brien.] It has, and has been disposed of.

The *Chief Justice*.] The question was raised when the case first came before the magistrate.

Dr. Boyd.] The magistrate could not dispose of it. I submit, my Lord, that you should not deal with it, but should reserve the question for the Court of Criminal Appeal.

The *Chief Justice*.] My own opinion is that the person (disclosure) disclosed to a person whom he believed to be not the sender of the message, and I am not disposed to hold that, even if he disclosed the contents of a telegram to any person contrary to his duty.

Dr. Boyd.] I looked for a case of a similar character and could not find it. It is a novel case, and I ask you, my Lord, to enable me to take the opinion of the Court of Appeal on the question.

The *Chief Justice*.] We will see about that hereafter.

Mr. Cross.] I don't know, my Lord, whether you will direct the jury that there is no case.

The *Chief Justice* said he would let the case go to the jury.

Mr. Cross.] There is a serious case on the construction of the statute.

The *Chief Justice*.] In the meantime I will send the case to the jury.

Mr. Cross said he would bring before his Lordship authorities on the subject.

The *Chief Justice*.] I don't think there can be any authority on the subject.

Mr. Cross.] As to the construction of criminal statutes.

The *Chief Justice*.] I don't think we need enter into any discussion on the subject.

Mr. Cross.] We think that there is a great deal in the objection we have made.

The *Chief Justice* said that in the meantime they should confine themselves to the facts of the case.

Dr. Boyd, Q.C., then addressed the jury on

behalf of the prisoner. He said.—Gentlemen, I appear on behalf of a man who has been, up to the present time, a well-conducted young man, who has not been airing his eloquence or his oratory in the manner attempted by Mr. St. John Breson. He has been ten years in the Post Office, and the officials connected with the Post Office state that they have no complaint to make of him; that he was early at his duties and was late to leave. Now, who is the party who makes this case against him? You are necessarily deprived of the evidence of the young man himself, because he cannot be examined, and the only evidence is that of Mr. Edward Brennan, or of Mr. St. John Breson, whichever he calls himself. Look at the whole character of the man; look at the nature of his proclivities before you take every statement of his as gospel, before you find this young man guilty of the charge alleged against him. I will show you, on the evidence of this man himself, that it is wholly incredible that the statement could be made to him, directly or indirectly, by any man who was not out of his mind. Now, in the first place, assuming that it was made to him by Burton, we have it in evidence that Mr. Healy, whose name has been mentioned, does not at all resemble Mr. St. John Breson. Mr. Healy has a large flowing moustache, and he has not got that Italian affair on his chin which this gentleman here has got. In fact, he is altogether unlike him. Mr. Healy is so unlike Mr. St. John Breson that no man outside Swift's Hospital would take one for the other. Mr. St. John Breson cannot be mistreated as if the prisoner were free. You are bound to criticize every word of this man with the greatest accuracy. Now, are you ever so likely to believe such a story as this man tells, that a man so dissimilar as the hoodlum Mr. St. John Breson is to Mr. Healy, would be mistaken for Mr. Healy. I never had the honour of seeing Mr. St. John Breson till to-day, and I venture to say I will never forget him, and I will venture to say that I would never mistake him for Mr. Healy; and I don't think that my client, Mr. Burton, who is charged here with the offence, would be more likely than I to do so. Now, is the first instance, this man is admitted to be a friend of Mr. Sullivan, and Mr. Burton, being a friend of Mr. Sullivan, must have known Healy well; and now is it likely that he would go up and address Mr. St. John Breson as Mr. Healy, a man so dissimilar to him in appearance? Is it because he was more unlike him than any man in the hall that he would do so? I don't suppose there is a person in the court more unlike Mr. Healy than is Mr. St. John Breson, and is it likely that out of all the men in the hall Mr. St. John Breson would go up to him and address him rashly as Mr. Healy? Now, there is that improbability. There is no resemblance between the two men. And if he, the prisoner, never saw Healy and did not know anything about him, is it not a moral improbability that he would not have satisfied himself if he wanted to speak to him, whether the man whom he addressed was or was not Mr. Healy? But the case here is that, without having any conversation with anybody, he goes up and addresses this man, and confides to him a secret which, as Mr. Breson says, would ruin this young man; now either Burton knew Healy, and unless he was a lunatic, as Mr. St. John Breson admits, he could not have mistaken Mr. St. John Breson for Mr. Healy; if he did not know him is it likely that

that he would have addressed Mr. St. John Bresen without first inquiring whether he was or was not Mr. Healy? Would he not have said to him, "Are you Mr. Healy?" or "Have I the honour of addressing Mr. Healy?" But without any inquiry he ushers at him and says, "Mr. Fay is not a friend of yours;" a friend of whom? Of the unknown man to whom he was speaking, and, curious circumstance that he should address the sender of the telegram himself. Now is not this more like the extraction of a heated brain than that it should have ever at all occurred? That without asking him who he was he should address him as Mr. Healy; and now is it likely that Mr. Burton is a man who would have had the information in the course of his duty? If in violation of his duty he obtains a secret, the law imposes certain terms; but did he get this information, and if he got it at all, what evidence is there that he got it in the course of his duty, or that he got it at all in the Post Office? When was this telegram sent? It was sent upon Saturday at half-past two o'clock in the day. On Monday between two and three o'clock the communication takes place; in other words, 48 hours after the telegraph has gone to the world, and has gone on the wire, and amongst telegraph clerks, the conversation takes place that is alleged to be a disclosure by him of a secret, in violation of what he believed to be his duty. Therefore, gentlemen, I say it is not proved here in this case that this was a matter he obtained in the discharge of his duty. He may have heard it from the sender or from the receiver. If I happened to be a telegraph clerk, and received a knowledge of the contents of the telegram in that way, it would be no violation of my duty. I am only responsible if I receive it in the course of my duty. There is no duty imposed upon me to keep it secret, unless I hear it in the course of my duty. Now supposing a person came to him and gave him the information in the City Hall, and said, "So-and-so is going to stand;" or supposing one telegraph boy says to another telegraph boy, "Did you hear of such a telegram?" and if the prisoner heard it in that way outside the course of his duty, the obligation of secrecy would not be imposed upon him. But what evidence is there that he got this information in the course of his duty? If he got it not in the course of his duty, if he did not read it off the wire or otherwise, in the Post Office, he has violated no duty. Now, was this telegram such an awfully secret matter that nobody else would have communicated it to him? Was it a secret matter? We have got an insight into telegrams. First of all this telegram was handed to this lady at the post office in the Four Courts; then it is given to the boy, who sends it through the tube to the General Post Office. A boy takes it out of the tube, and he had an opportunity of seeing it. Then another boy leaves it on the desk, where they are sorted, and given to the different instrument clerks, and they say no more about it. They are afterwards brought to the intelligence-room, and after they are taken from the instrument-room they are brought to the intelligence-room. What case is there on what takes place in the intelligence-room? We have evidence as to the duty of the clerks in the intelligence-room. The clerks read the slips that come for the newspapers. What is the evidence of Mr. Shackleton? That the clerks there are busy in reading and deciphering telegrams, and transferring them. Now would the prisoner, if he walked up and down the passage, have been able to see

them? It would depend on many circumstances whether the telegram was in the tube or was on the table, or had it face up. You could hardly read these three pages of a telegram without turning over the leaves. There is no evidence that this boy was ever seen with that document in his hand; there is no evidence that he ever touched it, and therefore you are bound to assume that he did not. He is about six yards away from it and at right angles from it; and then, Mr. Shackleton's evidence is that there were several clerks between him and it; therefore, I say there is nothing here to show that Burton, who was not in the intelligence office, who was not in the office to receive it, that he ever had it in his hand, to enable him to communicate it to anybody else. Now what is the evidence of Mr. St. John Bresen as to that? "Mr. Fay is no friend of yours." He says he is a telegraph clerk, and that all the telegrams pass through his hands. If Burton were speaking to him, was that true? Not a single telegram passes through his hand. Was Burton speaking to him? Was the man that was identified, Burton, was he speaking to him? If he were, Burton was telling him an absolute falsehood. He never sees the private telegrams; he was in another room. Burton would be saying what was untrue if he said that all the telegrams passed through his hands. But was it Burton who was speaking to him? It is perfectly plain that it could not have been Burton that was speaking to him, according to that it was said at all to him. But was it said, "Because I am a Parnellite I tell you this?" Well, that was a kind of communication to make to a man about whom he knew nothing. And then he said he spent his day deciphering messages. Speaking to a man who was unknown to him, was that likely? Was it likely that he said this to him, mistaking him for Mr. Healy? "He is running a Mr. St. John Bresen against you." "He sent a telegram to his brother, who is in a bank or something in Meath." "St. John Bresen is a fellow in Kingstown, and Fay says he is a man of means." If Burton knew all that, he should know the appearance of Mr. St. John Bresen, and if he did, would he say, "St. John Bresen is a fellow from Kingstown, and Fay says he is a man of means." Mr. St. John Bresen asked him who was this Bresen. He even began to misrepresent his appearance, whether he was Mr. Edward Bresen of a former day, or the Mr. St. John Bresen of the present day. He said, "Mr. St. John Bresen is a fellow from Kingstown, he is a graver's man." All I know about him is that he was in Rome, and that he wrote some productions, scandalous productions, which were a libel on his fellow-countrymen; that he is the writer of that article entitled, "The Monks of Merrion-square," and that in it he abused the ladies of Dublin, the officials of Dublin Castle, and everybody else. The man who libelled everybody is the man whose testimony a Dublin jury are asked implicitly to believe. "He stood for Westmeath against Mr. T. D. Sullivan, and is a vintner's man. I let Mr. Sullivan know everything, because he has been a second father to me." Gentlemen, there is a little secret let out by Mr. St. John Bresen showing his acrimonious feeling. He is no friend of Mr. Sullivan; he is a friend of Mr. Callan. That is enough; because he is a friend of Mr. Sullivan to make the respectable St. John Bresen say what he can say against him. "I tell you this because I know you are Mr. Healy." Gentlemen, we are to exercise our common sense on this case. Whether

PAPERS RELATING TO THE

he is Mr. Edward Brennan or Mr. St. John Brennan, whether he wrote a publication of good report or of bad report, we are not to take everything he says as gospel. Is there any one of you in that box, if you were going to make a communication such as that alleged, and if you were in Burton's place, would you not ask this witness before you spoke to him whether he was Mr. Healy? But without asking him a single question, without asking him his name, he goes up to him, and unbothers himself, and says, "Because I know you are Mr. Healy." If he knew Mr. Healy, I wonder how he could mistake for him a man who was so dissimilar to him. The whole of that evidence from beginning to end is incredible. After that occurrence at that place we have that man seeing Mr. Callan; we have something inquired about at the Post Office by Mr. Callan; and we have this proceeding instituted against a friend of Mr. T. D. Sullivan, who is no friend of Mr. Callan. He must have known something of Mr. St. John Brennan, and of his antecedents, when he said he was a grocer's man; I wish he was half so respectable. If he had remained at home and had devoted his attention to that business, instead of going to Rome and to Naples, he would be more credible than he is. Are we to exercise our common sense at all? This is a communication made 48 hours after the telegram is sent, and is it likely that the man obtained that information on Saturday and kept it till Monday. Do you think he would not have grace to see him on Sunday? If he were told it on that Monday it was by some person who had heard it on the Sunday, and who had communicated it to him, and not by a person who received it in his official position. This was not a communication which he should receive in the course of his official duty. The man who said that the telegram passed through his hands could not have been Burton. I cannot excuse Mr. Burton again, Mr. St. John Brennan; consider the improbabilities of this case; consider his official duties. Are you satisfied beyond a reasonable doubt; are you satisfied that this case against the prisoner has been made out to your satisfaction? You are bound to criticise the evidence carefully; you must believe the witness to be accurate, and if you are not satisfied beyond a reasonable doubt that he violated a secret, the knowledge of which he obtained in the discharge of his official duties, you should acquit my client.

Mr. Atkinson, Q.C., rose to reply on the part of the prosecution.

Dr. Boyd submitted that he had not the right of reply in a case of this kind.

Mr. Atkinson, Q.C.] My Lord, this question was decided in the time of your Lordship's predecessor. Mr. O'Brien, who has just left, says it is the invariable practice in this Court.

Dr. Boyd contended that Mr. Atkinson had not the right to address the jury. It was decided he said that the exercise of the right should be confined to the Attorney General in person. He referred to the case of the Queen v. Colclough, and said that the right of reply on the part of the prosecution was never pressed excepting in the event of the Attorney General appearing in person.

Mr. Atkinson said that the Solicitor General had the right of reply.

The Chief Justice.] All prosecutions are really conducted by the Attorney General or his representative, and I rather believe that the practice

has been to give counsel for the Crown the right to reply.

Dr. Boyd, Q.C.] In Robertson's case your Lordship ruled that they had not.

Mr. Atkinson, Q.C.] That was a private prosecution.

The Chief Justice to Dr. Boyd.] That I decided that the Crown had no right to reply.

Dr. Boyd.] These are the only authorities I have, my Lord; the right of reply may be in murder cases.

Mr. Atkinson said that in more recent cases than that mentioned by Dr. Boyd the right of reply was recognised in the case of the Solicitor General, and he (Mr. Atkinson) did not see that any distinction could be drawn between the Solicitor General and those who represented him.

The Chief Justice then ruled in favour of Mr. Atkinson's contention.

Mr. Atkinson, Q.C., then addressed the jury. He said,—Gentlemen, I should not have insisted on my right to address you, but I think that the mode in which this defence has been conducted calls for some observations on my part, and for some reprobation. This is an important case for the public, because we know that day by day telegraphic communication has become more patronised and used, and that it is one of the greatest blessings of advanced civilisation, and we know that faith should be kept with those people who send telegrams on daily affairs, and that these telegrams, the secrecy respecting them should be inviolably preserved. Is it to be borne that, if you send a telegram on your private business, and that the contents of it are disclosed, that the department is to wink or connive at the disclosure of that communication by one of their underlings? Whether the communications be political or private, they are bound to do their duty by the sender, and to preserve inviolably the secrets with which they are entrusted. What has been the case with Mr. Fay may be the case with you or any one of you to-morrow. How would you feel on having your communications disclosed; if you said, we will not prosecute this man, we will connive or wink at this dereliction of duty. You have a duty to discharge in this case, and it is your duty, irrespective of private sympathy or personal misfortune, to protect the public in such a matter as this. Therefore, I say that the department of the Post Office has no desire, no anxiety for the punishment of this man, but that the public should have confidence in the character of the persons by whom it is served.

I thought that the mode in which this defence has been conducted called for some observations. At one time interested parties were not allowed to give evidence. Whenever a man has some private object in promoting a prosecution, it is by all means right that his evidence should be sifted, and it would be dangerous to the investigation of truth if latitudes were abridged. It is ridiculous to say that Mr. St. John Brennan has any motive or malice here. If you are to find a verdict of acquittal, it must be on the ground that Mr. Brennan is mistaken. And if that be so, what excuse or apology can be made for the brutal and untenable attack made on this gentleman, who, without a tittle of evidence to justify the suggestion, was asked whether he kept a public gambling hell or brothel in Rome? I presume the gentleman who asked him the question

tion was carried away by zeal, but no such question should have been asked without some ground for it.

Dr. Boyd said there was, and asked that counsel for the prosecution should confine himself to the case and conduct himself as a gentleman.

The Chief Justice deprecated the introduction of the sensational element into the case.

Mr. Athlone.] I am not going to introduce any sensation, nor am I going to defend Mr. St. John Bresen. I think my learned friend was right when he went on anything tangible, but when he went on matters that were not tangible, he was going outside his duty. It is ridiculous to say that because a man has written some loose predictions he would deliberately stonewall himself. This article may be loose; it may be libellous; but you are asked to conclude that because he was asked, did he write in that strain, he comes forward without any other motive than to gratify malice. If people were to be examined in that way, who would escape. Would Moore, would Shakespeare, would Byron, would Teutons even. I don't know who, amongst those who won the pride and glory of English literature, would escape. You will find things as bad in any of those great anthologies as in anything Mr. St. John Bresen has written. You will find as bad in the satires of Horace and Juvenal. I am defending Mr. Bresen against accusations that are untrue. Now, it is said that this is imagination on the part of Mr. Bresen. How did it come; why did he pitch upon a clerk who happened to be out at four o'clock on Saturday, and at four o'clock on Monday. Why did he select a person who, he says, was found talking to Mr. T. D. Sullivan and Mr. Sexton, if he did not speak the truth? If he were inaccurate there would have been nothing easier than for the prisoner at the bar to have produced Mr. T. D. Sullivan or Mr. Sexton.

Dr. Boyd.] There is not a word about Mr. T. D. Sullivan or about Mr. Sexton on the information.

Mr. Athlone.] I am not saying that there is. The Chief Justice.] Why should there be? He said it in his evidence.

Dr. Boyd.] That was the first time he said it.

The Chief Justice.] Whether it is in the information or not.

Mr. Athlone.] Why did not these gentlemen, or either of them, come here, or some person who would account for his business at this meeting, where Mr. St. John Bresen says he was.

Mr. O'Toole said that Mr. Sullivan's name was mentioned in the second deposition.

Mr. Athlone read it from the deposition.

Dr. Boyd said that that was a totally different thing from the original information.

Mr. Athlone.] Why did he not produce Mr. Sullivan to say he knew nothing about him, that he was not a second father to him; but he does not produce a single witness in his behalf to prove that he was not speaking to either of these gentlemen. Though he is in the dock, there is nothing in the world to prevent him bringing others here to say that that is not true. It is not proved that Mr. St. John Bresen is not known to him. Mr. St. John Bresen could have been asked did he see him before? Nothing of the kind. How do you account for Mr. St. John Bresen going into the telegraph office on the 18th, and laying his hand on this man, Burton,

Dr. Boyd.] The 19th.

Mr. Athlone.] How did he select this man whom he did not know before, and who, apparently, did not know him? One of you, gentlemen, asked him, did he ask him his name, and he said he knew his name was Burton. How did he discover his name unless he was told it by this man? Mr. St. John Bresen swore that this telegraph clerk told him this, and counsel for the prisoner asked how could Burton have known that. I will tell you how Burton could have known that. He could have known it from having seen the telegram. He repeats almost word for word the contents of the telegram. He reads the telegram: "He is an evator, a man of means." How did he know he was a man of means? Why, just from reading the telegram, and the fact that he says he was a man of means shows that he obtained it from the only means open to him, from the telegram. He tells him that he stood for Westmeath. How could he have known this, unless by seeing the communication which had been sent from Mr. Fay to his brother, who is something in connection with the bank, unless he had learned it from the telegram from Charles Fay of S. Merchants' Quay, Dublin, to Thomas Fay, Ulster Bank, Trim? It was just because he told Mr. Bresen the contents of the telegram, that we believe he knew the contents some way. Unless Mr. Bresen, for no object on earth that we can see, is deliberately telling a lie, what he tells you is what Burton said, that he was a telegraph clerk. My learned friend says that it never could have been Burton, because, in point of fact, all the private telegrams don't pass through his hands. Well, it may have been natural that he was anxious to magnify his importance by telling Mr. Hanly, as he thought, that all the telegrams pass through his hands. But he knew the telegram—he got at the contents of it some way. He does not suggest any person from whom he derived the information. If he derived the information from some other Post Office clerk, that Post Office clerk could have refused to answer it, on the ground that it would subject him to a criminal prosecution. But what is his own account? That he acquired the information in his capacity of a telegraph clerk. Now, if you believe one part of Mr. Bresen's evidence you should believe the other. The fact that he was told it in the office will make the offence of disclosure. But I will take his own account, that of telegrams passing through his hands as telegraph clerk. It is said that he had no opportunity of discovering it. Why that is ridiculous. However, if Mr. St. John Bresen is telling the truth, he did discover it. The docks were only six feet apart. If he was what he represented himself to be, the confidential communicant of Mr. T. D. Sullivan, on the look out for information of that kind, he might have made it his business at these election times to see what Mr. T. D. Sullivan would have an interest in knowing, and he would have ample opportunity of seeing these telegrams, for they were lying within six feet of him. Mr. Bresen came here, and he has been subjected to an unpleasant ordeal not at all calculated to induce him to put the criminal law in force, and to run the gauntlet of cross-examination. I say that there is no case of mistaken identity. This gentleman came and identified the prisoner with half a glance. He had ample opportunity of observing him on the two occasions that he spoke to him at the hall.

This young man (the prisoner) may have been led astray by others; but the case is one in which, in the interests of the public you should do your duty, if you believe he obtained this information in the way alleged, and disclosed the contents of the telegram.

The *Lord Chief Justice*, in charging the jury, said,—Gentlemen, this is a very serious case, yet it lies in a small compass. The disclosure of a telegram sent from one merchant to another would not have excited so much heat or eloquence, but as the telegram in this case refers to a political matter, some sensationalism has been introduced into it; but you should remove all that from your minds, and apply yourselves to the consideration of the question which you have to determine, and that is, whether this prisoner, the gentleman at the bar, disclosed this information while he was, as the state says, a person "having official duties connected with the Post Office, or acting on the part of the Postmaster General, who shall, contrary to his duty, disclose, or in any way make known or intercept the contents, or any part of the contents, of any telegraphic message, or any message entrusted to the Postmaster General for the purpose of transmission, shall, in England and in Ireland, be guilty of a misdemeanour." That is the simple question which you have to try. It may have the most injurious and mischievous consequences to individuals. An officer in the Post Office has only one duty to perform, and he manifestly commits the greatest violation of that duty if he violates or commits that communication to a person for whom it was not intended. It is a gross act of impropriety, and the question for you to consider is, whether the prisoner at the bar was guilty of that offence. It is perfectly plain that when the complaint was made to the authorities, that it was their duty to institute a prosecution on the part of the public who use this telegraphic communication to an immense extent. It is for their interest, for your interests, and for the interest of every member of the public that this prosecution has been instituted. I trust you will consider it well, with attention, and with a complete absence of feeling or tendency one way or another. It is perfectly plain that on the 15th of May this telegram was sent; it is perfectly plain that that message did convey the meaning which Mr. Charles Fay wished; it is perfectly certain that this telegram was delivered at the Four Courts; that it was delivered at the office, and that it was sent to its destination. After these messages were sent to the instrument, the copies, for obvious purposes, are preserved. They are put on the desk there; then they are put into the pigeon-holes; each telegraph office having a pigeon-hole for itself, and they are all sent back in the evening to the telegraph offices from which they were sent. The young lady who sent it received it back in the evening. Then it is said that the prisoner could hardly have had an opportunity of seeing the telegram. The evidence establishes that it was laid upon a desk within six feet of where he was, and if he were on the look out he had means of getting a sufficient glance at the telegram which was there within a few feet of him; but the question is, whether you are to believe the evidence of Mr. Brenon. If you are to believe Mr. Brenon, he did obtain knowledge of the contents of the message, because he disclosed them to Mr. Brenon. Mr. Brenon says he sent

this message by Mr. Charles Fay's directions, and that he got an answer. That answer was not in favour of Mr. Brenon's candidature. On the Monday he tells us that he was in the City Hall between two and three o'clock. He tells us that some one pressed his hand. I suppose it was a man. He did not see the person who pressed his hand, but two or three minutes afterwards some young man—the prisoner—came, and he identifies the prisoner as the young man who beckoned him out of the room. He got out of the room and he came to this party. Then he says Mr. Fay is no friend of yours. The prisoner, he said, told that he is a telegraph clerk, and that the telegram passes through his hands. He says, "Because I am a Parasite I give you this information; but if it were known I should be ruined." He telephoned to his brother, who is in a bank or something in Meath: "He is running a Mr. St. John Brenon against you." I said, "Ugh! Mr. St. John Brenon is a fellow from Kilkenny, and Fay says he is a man of means." Then I asked him, "Who is this Mr. St. John Brenon?" He replied, "He is a grocer's man. He stood for Westmeath against Mr. T. D. Sullivan, and is a vintner's man." He then said to me, "I tell you this because I know you are Mr. Henly." Then I said to him, "What is your name?" and I took a good look at him. He replied, "Burton. I am a telegraph clerk." He then said to me, "Well, I know you are Mr. Henly." I said, "Ugh! I said 'I think you had best not be seen speaking to me; I can identify the man; I saw the telegram now produced; that telegram was written by me, at the instance, and with the authority, of Mr. Charles Fay, the sender; I handed it in at the Four Courts Telegraph Office on Saturday the 15th instant." The Chief Justice then said, Now, gentlemen, did these facts occur? did that conversation take place or did it not? did he press Brenon's hand? did he call him out? did he say, I am a telegraph clerk and that he would be ruined if it were known that he gave this information? did he say "I make this information because I know you are Mr. Henly, against whom Mr. Brenon is to be run?" Mr. Burton then made a complaint to the Post Office that this telegram had been disclosed, and he told Mr. Anderson, and he mentioned Mr. Burton who had given him this information; and the question is this, was this all a foul invention of Mr. Brenon's, or did he dream it? what motive had he of fixing on a telegraph clerk of the name of Burton, and of making this complaint against him for no reason? He did not know anything about him; is it possible or reasonable to suppose that that is all the creation of Mr. Brenon's imagination, and that such a thing never took place? I ask you to consider whether it is reasonable or right to suppose that that is all an invention? Is it natural that Mr. Brenon should complain to the Post Office. Brenon says that Burton is the person who did it, and Brenon goes into a crowded office and identifies the prisoner. Then we are asked to think that this is foul perjury on the part of Mr. Brenon. Mr. Brenon was asked, did he write that article that was produced here, and he admitted that he did write it. I can hardly criticize too strongly the letter which that man wrote to "Mayfair," in which he foully and scandalously libelled and slandered the ladies of this city and the gentlemen of this city. I remember

remember well when that article first appeared, and when every one in this city was indignant at it. It was as gross and vile a publication as ever emanated from a human being; and Mr. Brenon now says that it was not altogether justified. But although Mr. Brenon was the author of a foul and scandalous libel on his countrymen and on his countrywomen, and although he may have done this for the sake of what is called penny-a-lining, for the sake of what is called sensational writing in papers which circulate amongst people who delight in reading scandalous and foul libels on their neighbours, and although he may be answerable for it, and no doubt he is, although he was guilty of it, still it does not follow that he is guilty of inventing this story. Now, why should he invent this whole story about this telegram being disclosed, and fix on Mr. Burton as the person who did it? It is impossible to imagine such a thing. He told you about this conversation, and if you believe that evidence you can have no doubt but that Mr. Burton made that communication to him. Did Burton mistake his for Mr. Healy? It would be absurd and ridiculous to make this disclosure to Mr. Brenon. He must have made it to some one that he mistook for Mr. Healy, but why he should mistake Mr. Brenon for Mr. Healy I don't know. Mr. Brenon was the last person to whom he should have made the communication. This was a private telegram from Mr. Fay to his brother. Have you any reason to doubt that that fact took place? It must be confessed and conceded that Mr. Burton was at this meeting at the City Hall. He had ample means of knowing that he was not there if he were not, but it appears to me to be almost admitted that he was there at that meeting. Mr. Brenon has given his evidence; do you believe that evidence is fiction or do you believe it is substantial truth? Do you come to the conclusion that this man acquired the knowledge of the contents of that message by some means in the office of which he was an official, or that he communicated it to Mr. Brenon, believing he was Mr. Healy? The question is, did or did not he communicate or disclose the contents of that telegram? It is not a crime of moral character, but it is an offence against the law and against a useful enactment, if you believe that on the whole he did disclose it; if you believe he obtained a knowledge of the contents of that telegram because of his connection with the Post Office.

The jury having retired,

Dr. Boyd.] I ask your Lordship to reserve the question I raised?

The Chief Justice.] The jury may be going to acquit.

After the jury had been absent about half an hour they returned to Court with a verdict of guilty on the second count, but recommended the prisoner to mercy.

Mr. O'Brien, Q.C., addressing the Chief Justice, said, my Lord, before your Lordship disposes of the case I would ask you to hear Mr. Gage?

The Chief Justice.] On what?

Dr. Boyd.] I don't see why one man is to be visited with the offences of others.

47.

The Chief Justice.] I don't think so. This is the first prosecution under the Act.

Mr. Cross said that the prisoner had been always a well-conducted young man, and that he had been ten years in the service of the Post Office; he had a wife and children depending on him.

Dr. Boyd again asked his Lordship to reserve for the Court of Appeal the question he had raised.

Dr. Boyd.] The case is a misdemeanour, and unless your Lordship reserves the question we cannot appeal.

Mr. O'Brien, Q.C.] It is an entirely groundless prosecution—

Mr. Cross.] We are quite prepared to argue this question and the mere fact of Mr. O'Brien making a statement that this is wholly groundless—

The Chief Justice.] I have no opinion on it myself.

Mr. Cross.] I am sure your Lordship will not depart from the usual course. It is a point of great novelty; we entertain a strong opinion on it.

The Chief Justice.] It is entirely in my discretion. I can pronounce judgment but reserve the question.

Mr. O'Brien to the Chief Justice.] My Lord, the power to have cases reserved defeats in reality the purposes of a prosecution, persons protracted sentence—

Mr. Cross.] This is by no means a frivolous application; it is not made for any purpose other than that we have mentioned.

The Chief Justice.] It is about as frivolous an application as was ever made. This gentleman discloses the contents of a message knowing that it was contrary to law to do so, and he discloses it to a person whom he does not know, and who he believes to be a stranger. He has violated the law, and yet it is argued that it is no offence, because the person to whom he made the communication is said to have known the contents of the message already. In disclosing the contents of the telegram in this case, he disclosed them to a person whom he believed to be a stranger, and, therefore, in the most complete sense he violated the duty imposed on him. That telegram was sent from Mr. Fay through Mr. Brenon; Mr. Brenon dictated the telegram.

Mr. Cross.] This offence, if it be anything, is an offence under the statute. If it is not a crime under the statute, it is no offence at all. The offence is for disclosing the contents of a telegram. The evidence is that the person who sent the telegram was the author of the telegram. The person to whom the disclosure was made was the person who sent the telegram. Now, we submit that this statute, being a criminal statute, must be construed strictly, and we say that the strict letter of the law should be adhered to. In Hardcastle on statutory law, it was laid down by Mr. Justice Blackburne in the case of *Wells v. Therpe*.

The Chief Justice.] Common-place observations of that kind.—

Mr. Cane.] I am submitting the dicta of judges. These observations may be spoken of, but Chief Baron Pollock says: Counsel read the observations, which were to the effect that if statutes were not construed strictly a lax system would be introduced. He submitted that when he and Dr. Lloyd entertained a strong opinion on the question raised, they were entitled to have it discussed and fully argued before the Court of Appeal. This course would do no harm to anybody.

The Chief Justice.] I consider that the offence has been committed, and I will not reserve any

case. *If his Lordship then addressing the prisoner at the bar said:* Well, prisoner at the bar, you have been found guilty of violating the Statute. You were conscious that you were violating it. At the same time, though it is an offence under the Statute, you might not have been aware of the penalty imposed, and therefore I am not, under the circumstances, disposed to pass a heavy sentence on you. You must be imprisoned for two months with hard labour.

Dr. Boyd said that the prisoner stated to him that he was under the care of a doctor.

Mr. O'Brien objected to any further discussion.

I certify that the foregoing report is a true and accurate transcript of my shorthand notes.

3 July 1880.

William W. Idealy, Reporter,
81, Sumner Hill, Dublin.

TELEGRAM PROSECUTION (IRELAND).

COPIES of the Testimony in the Case of the Queen v. Burton, a Telegraph Clerk, taken before the Police Magistrate, Dublin, on or about 20 May last (one of the Bank Boxes) were laid by the Prisoner and his Barrister (—self), of the Official or Special Criminal Writers' Bureau at the Trial of Green Street, on Friday 18 June 1880, when the defendant Henry Burton was convicted of, and sentenced to Two Months' Imprisonment for, obstructing Telegraphs in reference to the late Election for the County of Meath.

(Mr. Collier.)

Extracted by The House of Commons, in its Privileges,
4 July 1881.